apparent means to pay them. If they made iuquiries, then they learned that he would have $12,000 in hands to pay for the improvements he was making, and they trusted him that he would appropriate it properly. In no way that we can regard this case can we perceive that the appellants have any show of equity, to demand that their claims shall be preferred to the mortgage.

Decree affirmed at the cost of the Appellants.

WOODWARD and KNOX, JJ. dissented.

Common Pleas, Philadelphia County, Pa., 1824.

PERRY *vs.* KINLEY.

Under the rules of the Courts of Equity in Pennsylvania, a defendant may by answer protect himself against discovery, through a denial of the camplainant's title, to the same extent as he could by plea in England; and he is not deprived of this right by submitting unnecessarily to answer some of the interrogatories of the bill, against which he might also have protected himself.

In Equity. Exceptions to answer.

THOMPSON, P. J.—The exceptions taken to the sufficiency of the answer, are based npon the rule of the English Chancery Courts, that a defendant who submits to answer, must answer fully—at least so far as to enable the plaintiff to have a decree against him. It was for a long time an unsettled question whether the defendant could in his answer deny the plaintiff's right, and refuse the discovery, to which the right, thus denied, alone entitled the defendant.

This manner of pleading which Lord Eldon, in *Shaw* vs. *Ching*, 11 Ves. 305, styles a sort of illegitimate pleading, and in *Somerville* vs. *Mackay*, 16 *Ves.* 387; speaks of as inconvenient, seems, to have been abandoned in England, in conformity with the views of Sir John Leach, V. C., expressed in *Mazeraddo* vs. *Maitland*, 3 Mad. 66; and in——— vs. *Harrison*, 4 Mad. 252, in which the

rule that a party cannot by his answer, protect himself from answering, is considered settled. In New York also, this general rule prevails, to which there are but few well established exceptions. *Bank of Utica* vs. *Messereau*, 7 Paige, 71.

In those Courts the defendant can object to the discovery sought, only by demurrer or plea—where, however the case requires an answer to sustain the plea, in order to give the plaintiff the advantage of such facts as are within the defendant's knowledge, and would tend to support the plaintiff's case, *Thring* vs. *Edgar*, 2 S. & S., 457; it is sometimes difficult to ascertain the limits to which the plea and answer are severally to extend. If the answer disclose too much, the plea is considered to be overruled, and if not sufficiently full, upon argument of the plea, every fact stated in the bill and not denied by the answer, must be taken as true—*Roche* vs. *Mogell*, 2 Sch. & Ves., 724; *Jones* vs. *Davis*, 16 Ves. 262.

To avoid these difficulties, and in order to simplify an abstruse subject, our Supreme Court, have adopted the form of pleading, so little regarded in England, and by an express rule permits a defendant to insist upon all matters of defence in his answer, either in law or to the merits of the bill of which he may be entitled to avail himself by plea. Whenever a plea will protect him from discovery, his answer will have the same effect. It is not denied that in the case before us, the defendant might by a plea, have protected himself from the discovery sought by the interrogatories, to which it is alleged he has not fully answered. By his plea he might have put the plaintiff upon proof of the alleged trust, and having denied the existence of such trust by his answer, he is equally protected from the discovery called for. That the defendant has answered a part of the interrogatories more fully than was necessary, and thus afforded to the plaintiff evidence of facts which he might have refused to disclose, while he explicitly denies the *principal fact* of the trust, cannot under the circumstances of this case, deprive him of the benefit of the rule of Court. He is still protected from the discovery which a plea would have avoided. The exceptions taken on this ground are therefore overruled.